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April 14, 2021

Re: *Jane Doe 1-10 v. Baylor University*; Cause No. 6:16-cv-173-RP; In the United States District
        Court, Western District of Texas, Waco Division

PLAINTIFFS' ADVISORY REGARDING ECF 932

Judge Austin:

The short answer to the Court's latest inquiry is two-fold. First, the numbers reported by Plaintiffs in ECF 904-1 at 8 were not filtered for responsiveness nor pre/post June 15, 2016, whereas ECF 929 requested responsiveness and pre/post be used for the document count. Second, the ECF 904-1 numbers are added up assuming the accuracy of Baylor's representations of "Previously Produced/Logged," whereas Plaintiffs' position set forth in ECF 929 instead assumes that ULEX's by-hand findings are accurate. For reasons Plaintiffs briefed in ECF 904 and 914, Plaintiffs cannot accept Baylor's representations as to previously produced/logged documents, as those representations are directly refuted by the findings resulting from ULEX's by-hand comparison.

THE 3,327/2,793 NUMBERS

The chart resulting in the numbers 3,327 and 2,793 (ECF 904-1 at 8) are taken from Baylor's Accounting Log and were not meant to reflect Plaintiffs' belief as to accuracy. That chart *accepts Baylor's "Explanation"* column despite those explanations being contradicted by ULEX. Adding up only the "Newly Produced/Logged" numbers and accepting Baylor's "Explanation" column and thus excluding documents Baylor claims were 'Previously Produced/Logged" should not be taken to mean that Plaintiffs agree with these numbers - "[Y]et there is only Baylor's word on this and no adequate explanation …" ECF 904 at Pages 8-9. For example, Baylor claims that 743 documents were "Previously Produced," but ULEX determined there was "No Comparison File Provided" for these same documents, meaning they were not produced. That said, even if all Baylor says is true and ULEX is wrong, thousands of documents are still not produced and not logged. The math for the 3,327/2,795 is highlighted below – note that those documents that Baylor claims were previously produced/logged *are excluded*, despite the fact that ULEX says they were not provided to ULEX as having been produced or logged.

ULEX Determination	# of Docs	Baylor's Accounting Log Explanation	Workspace
No Comparison File Provided	8,257	18 NA	Rel Rest 1 = 513
		3,326 Newly Logged	R
		2,793 Newly Produced	R
		1,126 Non-Responsive	W
		250 Previously Logged	
		743 Previously Produced	
		1 Withheld by Agreement	
Variance	3,872	1 Newly Logged	Rel Rest 1 = 80
		50 Non-Responsive (Post 6/15/16 NCAA)	Rel Rest 3 = 81
		3,300 Previously Logged	Wksp 4 = 3,711
		511 Previously Produced	
		10 Withheld by Agreement	

(Annotation within table: 3,327 Newly Logged & 2,793 Newly Produced - Numbers according to Baylor's Accounting Log.)

THE 2,500/5,569 NUMBERS

The 2,500/5,569 numbers are from the same Baylor Accounting Log *after* Baylor's "Explanation Column Post/Pre June 15, 2016" *is included* as was asked for in ECF 929 - the Court asked about only responsive and pre-June 15, 2016 documents. While Plaintiffs do not concede Baylor's Non-Responsive claims, the numbers 2,500/5,569 accept Baylor's "Non-Responsive" designation. However, since ULEX's by-hand findings refute Baylor's contention of what documents were previously produced/logged, ULEX's determination is used to accurately count what was not produced/logged prior to the audit.

In the chart below, Baylor's "Produced Logged Column" contains Baylor representations – representations clearly determined false by ULEX. While Baylor labels 250 documents as "Previously Logged," ULEX found "no comparison file", so Plaintiffs added those back in. As noted above, Baylor says that 743 documents were "Previously Produced," but ULEX determined there is "no comparison file," so those are added back in. Baylor claims that 3,300/511 documents were "previously" produced/logged, yet ULEX says what Baylor provided to ULEX is in substantive "Variance" from what Pepper Hamilton gave ULEX, so those are added back in. In addition, "newly" produced/logged must be included to calculate documents Baylor had not produced/logged *prior to* the commencement of the ULEX audit. The result is 2,500/5,569. How the chart immediately below was generated is shown further below.

ULEX Determination	# of Docs	Baylor's Produced Logged Column Filter #'s		Baylor's Explanation Column Post / Pre June 15, 2016		
No Comparison File Provided	8,257	18	NA System Gen File	NA		
				1,308	post 6.15.16	
		3,326	Newly Logged	2,018	pre 6.15.16	
				1,547	post 6.15.16	
		2,793	Newly Produced	1,246	pre 6.15.16	
		1,126	Non Responsive	600	post 6.15.16	
		250	Previously Logged	250	pre 6.15.16	
		743	Previously Produced	743	pre 6.15.16	
		1	Withheld by Agreement	NA		
Variance	3,872	50	Non Responsive	50	post 6.15.16	
		1	Newly Logged	1	pre 6.15.16	
		3,300	Previously Logged	3,300	pre 6.15.16	
		511	Previously Produced	511	pre 6.15.16	
		10	Withheld by Agreement	NA		

Responsive Pre 6.15.16 not matched / not produced = (1246+743+511) 2,500

Responsive Pre 6.15.16 not matched / not logged = (2018+250+1+3300) 5569

Baylor wants Plaintiffs and the Court to accept its explanations when the only one who tested them, ULEX, says Baylor is wrong. ULEX even had the benefit of Baylor's explanations prior to doing the by-hand comparison, yet ULEX stood by its determinations and still disagrees with Baylor. That Baylor will not even allow ULEX to turn over the "Previously Produced" documents AEO for Plaintiffs to verify them speaks for itself.

How the reports above were generated will now be discussed. Using Baylor's Accounting Log, ULEX conducted its by-hand comparison and added a "ULX Disposition" column showing ULEX's final determination (ECF 904-4). This document, as Excel file, can be filtered/sorted into 5 categories: 1) Exact Match, 2) Substantive Match 3) No Comparison File Provided 4) Technical and 5) Variance (i.e. additional, different or missing substantive content) (ECF 897-2 & ECF 904). Plaintiffs have

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[1] All charts and spreadsheet screenshots have been reproduced in a larger format in Exhibit A.

offered to submit this Excel file for the Court to review independently should it so desire. However, this is an example of what the filter/sort looks like:

Filtering/sorting the Excel file by those newly/previously produced/logged was conducted as shown below (note this excludes Baylor's claimed Non-Responsive documents):

The following report is the result of the above filtering:

ULEX Determination	# of Docs	Baylor's Produced Logged Column Filter #'s	
No Comparison File Provided	8,257	18	NA System Gen File
		3,326	Newly Logged
		2,793	Newly Produced
		1,126	Non Responsive
		250	Previously Logged
		743	Previously Produced
		1	Withheld by Agreement
Variance	3,872	50	Non Responsive
		1	Newly Logged
		3,300	Previously Logged
		511	Previously Produced
		10	Withheld by Agreement

Plaintiffs then added Baylor's explanation column and filtered out the documents Baylor has indicated are post-June 15, 2016. The following reports was thus generated. –

ULEX Determination	# of Docs	Baylor's Produced Logged Column Filter #'s	Baylor's Explanation Column Post / Pre June 15, 2016	Baylor's Explanation Column
No Comparison File Provided	8,257	18 NA System Gen File	NA	
		3,326 Newly Logged	1,308 post 6.15.16	1,308 post 6.15.16
			2,018 pre 6.15.16	690 Binder Prepared Post 6.15.16
				12 More inclusive thread logged
				2 more inclusive thread previously logged
				18 previously logged
				177 previously logged as portion of a binder
				1 Cannot locate in files transferred from PH
				1 attachment doesn't have a bates in Cozen
				1 needs to be produced with attachment
				1 no separate bates on this attachment
				1 less inclusive email previously logged
				1114 no explanation
		2,793 Newly Produced	1,547 post 6.15.16	1532 post 6.15.16
				15 post 6.15.16 redaction of info related to different client
			1,246 pre 6.15.16	1 Admin email btwn Pepper and Baylor OGC
				2 Binder cover for docs prev. logged or produced
				73 Binder prep'd 6.15.16, containing file prev. produced
				9 mistakenly logged, newly produced
				3 Prep'd post 6.15.16 JA file produced & placed in binder.
				18 Prepared post 6.15.16; JA file previously produced
				1 previously produced
				11 redacted for privilege
				1 first page previously produced
				2 unable to read
				1125 no explanation
		1,126 Non Responsive	600 post 6.15.16	600 non-responsive
			526 pre 6.15.16	526 non responsive
		250 Previously Logged	250 pre 6.15.16	242 prev logged bates provided
				2 more inclusive thread previously logged
				2 Binder cont. prev. produced Judicial Affairs & TIX file
				4 no explanation but see hard copy index
		743 Previously Produced	743 pre 6.15.16	47 provide bates #'s
				4 more inclusive email logged
				692 no explanation
		1 Withheld by Agreement	NA	NA
Variance	3,872	50 Non Resposive	50 post 6.15.16	50 post 6.15.16 NCAA
		1 Newly Logged	1 pre 6.15.16	1 no explanation
		3,300 Previously Logged	3,300 pre 6.15.16	645 no explanation
				2655 with various explanations including different versions logged
		511 Previously Produced	511 pre 6.15.16	509 no explanation
				1 more inclusive prev. logged
				1 more inclusive prev. prod.
		10 Withheld by Agreement	NA	NA

Responsive Pre 6.15.16 not matched / not produced = (1246+743+511) 2,500

Responsive Pre 6.15.16 not matched / not logged = (2018+250+1+3300) 5569

The highlighted rows total the numbers Plaintiffs provided to the Court of pre-June 15, 2016 documents which Baylor does not claim are Non-Responsive - 2,500 not previously produced and 5,569 not previously logged prior to the ULEX audit. "Newly produced/logged" documents were of course produced/logged *after* the ULEX audit and therefore included. Thus, if Baylor is believed regarding responsiveness and if Baylor is believed about what is pre/post June 15, 2016, the 2,500/5,569 numbers reflect ULEX's determination of the questions posed by the Court in ECF 929.

When Plaintiffs conferred with Baylor per the Court's order in ECF 929, Baylor's explanations remained wanting. Plaintiffs' position is that the ULEX process should be trusted and not undermined by Baylor's latest explanations. Plaintiffs are prepared to elaborate on Baylor's latest explanations but interpreted the latest order as restricting briefing to the numbers alone.

Respectfully,

Jim Dunnam

<u>CERTIFICATE OF SERVICE</u>

This is to certify that a true and correct copy of the above and foregoing has been filed by ECF and sent to counsel of record via electronic notification on April 14, 2021.

<u>/s/Jim Dunnam</u>
JIM DUNNAM